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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 A.T.,

10 Plaintiff,

11 v.

12 SEATTLE SCHOOL DISTRICT NO. 1,

13 Defendant.

14 Case No. C22-1140-RSM

15 ORDER GRANTING
16 DEFENDANT'S MOTION TO
17 EXCLUDE EXPERT WITNESS

18 This matter comes before the Court on Defendant Seattle School District No. 1
19 ("Defendant")'s Motion to Exclude Untimely Disclosed Expert Witnesses, specifically that of
20 Dr. David Widlan. Dkt. #47. Plaintiff A.T. ("Plaintiff") opposes. Dkt. #54.

21 The original deadline for expert witness disclosure was June 14, 2023. Dkt. #11. The
22 Court granted the parties' stipulated Motion and continued the trial date from December 11, 2023,
23 to April 29, 2024. Dkts. #14, #15, #16. However, the parties stipulated in their Motion that they
24 had "already exchanged reports as well [as] written discovery and responses thereto[,"] thus the
Court did not reset the original deadline for expert witness disclosures. Dkts. #14 at 2, #15, #16.

25 On June 14, 2023 (the original deadline), Plaintiff provided his Disclosure of Expert
26 Testimony (pursuant to Federal Rule of Civil Procedure 26(a)(2)) which mentioned Dr. Widlan,

1 but included no written report. Instead, the Disclosure included a statement that “Dr. Widlan is
 2 expected to perform a psychological evaluation of Plaintiff and may provide his opinions of
 3 Plaintiff’s alleged damages and their factual causation by way of a report.” Dkt. #41-1 at 2. In
 4 Defendant’s Disclosure of Rebuttal Expert Testimony, Defendant objected to Plaintiff’s
 5 disclosure of Dr. Widlan because “no such disclosure was made under applicable rules,” thus
 6 Defendant reserved the right to amend or supplement its disclosure as to Dr. Widlan or move to
 7 strike Plaintiff’s expert. Dkt. #41-2 at 2.

8 Plaintiff did not provide Dr. Widlan’s report until February 16, 2024. Dkt. #41-3. In the
 9 email providing the report, Plaintiff’s counsel said that they “realize[d] this [was] beyond the
 10 discovery cutoff, but [they] just realized that it was never sent out to [Defendant] in discovery.”
 11 Id. Plaintiff’s counsel blamed this on a former associate (the associate apparently responsible
 12 for that portion of discovery) quitting around the time of discovery cutoff and accepted that it
 13 was ultimately his “error for which I take responsibility.” *Id.*

14 Under Federal Rule of Civil Procedure 37(c)(1), “if a party fails to provide information or
 15 identify a witness as required by Rule 26(a) or (e), the party is not allowed to use that information
 16 or witness to supply evidence... at a trial, unless the failure was substantially justified or is
 17 harmless.” The rule discusses additional or alternative sanctions available on motion. As expert
 18 witness testimony, the Court finds that Plaintiff’s disclosure of Dr. Widlan was untimely under
 19 Rule 26(a)(2), and the most obvious sanction would be to exclude this witness.

20 Exclusions of an improperly disclosed expert is “automatic” unless “the failure to disclose
 21 was substantially justified or harmless.” *See Goodman v. Staples The Office Superstore, LLC,*
 22 644 F.3d 817, 826 (9th Cir. 2011). There are various factors to consider in determining whether
 23 or not the failure to disclose was substantially justified, but Plaintiff fails to provide such a
 24 justification for why Dr. Widlan’s report was not provided until almost 8 months after the report

1 was created. The Court concludes that the delay not substantially justified. Plaintiff says this
2 untimely disclosure does not prejudice Defendant because the report was produced “just
3 seventeen (17) days past” the alternative deadline of 90 days before the trial date under Rule
4 26(a)(2). Dkt. #54 at 5. However, the Court notes that Plaintiff’s expert report was late by several
5 months beyond the deadline of June 14, 2023, and was also late by “just seventeen (17) days,” as
6 admitted, even if the set deadline of June 14, 2023, did not exist. Reopening discovery would
7 substantially delay this case, set for trial in less than 2 months. Defendant would incur additional
8 costs to depose Dr. Widlan and pay its own expert to rebut Dr. Widlan’s opinion, requiring
9 defense counsel to revise preparations for trial. None of this is adequately addressed. Plaintiff’s
10 argument that “Defendant has not presented any evidence that Plaintiff’s counsel’s failure
11 involved any willfulness, fault, or bad faith” is also unconvincing because, first, it is Plaintiff’s
12 burden to show that untimely disclosure was outside of Plaintiff’s control and justified, and
13 second, the Court finds that the failure to timely disclose was not harmless.

14 Plaintiff fails to move for any alternative sanction. The Court concludes that excluding
15 Dr. Widlan as an expert witness is the appropriate sanction.

16 Given all of the above and having reviewed the relevant briefing and remainder of the
17 record, the Court hereby finds and ORDERS that Defendant’s Motion to Exclude Untimely
18 Disclosed Expert Witnesses, Dkt. #47, is GRANTED.

19 DATED this 30th day of April, 2024.

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22 RICARDO S. MARTINEZ
23 UNITED STATES DISTRICT JUDGE
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